

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B01

PLR-141087-09

Date:

December 09, 2009

### Legend

Old Parent =

New Parent =

Sub 1 =

Sub 2 =

Date A =

Date B =

Date C =

State A =

State B =

Company Official =

Tax Professional =

Dear :

This letter is in response to a letter dated September 11, 2009, submitted on behalf of Old Parent by its authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Old Parent is requesting an extension of time to file a “§ 1.337(d)-2(c) statement” under § 1.337(d)-2(c) of the Income Tax Regulations (the “Election”). The material information submitted is summarized below.

Prior to and during the taxable year ending on Date A, Old Parent was the common parent of an affiliated group that joined in filing consolidated U.S. Federal income tax returns (the “Old Parent consolidated group”). The Old Parent consolidated group included Sub 1 (a State A corporation), which, in turn, owned Sub 2 (a State B corporation). On Date B, Sub 1’s stock in Sub 2 became worthless. Effective Date C, New Parent became the common parent of an affiliated group that joined in filing consolidated U.S. Federal income tax returns and that included Old Parent and its affiliated subsidiaries (the “New Parent consolidated group”), and the Old Parent consolidated group ceased to exist.

An election under § 1.337(d)-2(c) to recognize some or all of a loss upon the worthlessness of Sub 2 stock was required to be filed with or as part of the Old Parent consolidated group's tax return for the taxable year ending on Date A. However, for various reasons, a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under §§ 301.9100-1 and 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Old Parent’s consolidated taxable year for which the Election should have been filed or for any taxable year that would be affected by the Election had it been timely filed.

Section 1.337(d)-2(a)(1) provides a general rule that no deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

Section 1.337(d)-2(a)(2)(ii) provides that a disposition means any event in which gain or loss is recognized, in whole or in part.

Section 1.337(d)-2(c)(2) provides that loss is not disallowed under § 1.337(d)-2(a)(1) to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities).

Section 1.337(d)-2(c)(1) provides that § 1.337(d)-2(c) applies with respect to stock of a subsidiary only if a separate statement entitled “§ 1.337(d)-2(c) statement” is included with the return in accordance with § 1.337(d)-2(c)(3).

Section 1.337(d)-2(c)(3) provides that the statement required under § 1.337(d)-2(c)(1) must be included with or as part of the taxpayer's return for the year of the disposition.

In general, § 1.337(d)-2 applies with respect to dispositions on or after March 3, 2005 and before September 17, 2008.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad) under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section § 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.337(d)-2(c)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Old Parent to file the Election, provided Old Parent acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Old Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Old Parent reasonably relied on a qualified tax professional who failed to make, or advise Old Parent to make, the Election and the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the information, affidavits, and representations submitted, we conclude that Old Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 75 days from the date on this letter, for Old Parent to file the Election.

The above extension of time is conditioned on the tax liability (if any) of the Old Parent consolidated group and the New Parent consolidated group being not lower, in the aggregate, for all years to which the Election applies and all subsequent years, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the tax liability for the years involved of the Old Parent consolidated group and the New Parent consolidated group. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether Old Parent qualifies substantively to make the Election. Specifically, no opinion is expressed as to whether or when Sub 2 stock became worthless or as to the amount (if any) of allowable loss with respect to the worthlessness of Sub 2 stock. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Old Parent, Company Official, and Tax Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: